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MAYOR AND COUNCIL  
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360/754-4150

Department of Ecology  
Water Quality Program  
AUG 22 2005

August 19, 2005

Washington Department of Ecology  
Water Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Attn: Mr. Bill Moore

Re: Comments on Western Washington Municipal NPDES Phase II Permit

Dear Mr. Moore:

The City of Tumwater Water Resources Department has reviewed the Preliminary Draft of the proposed NPDES Phase II permit issued by Ecology on May 16, 2005. Thank you for this opportunity to comment and provide Ecology with thoughts that may assist in the development of a permit that is both feasible and protective.

Attached is a document detailing comments to some particulars in the permit. Additionally, below are some general overall concerns we have with the permit and/or process.

**Timeframes:** Ecology is requiring the adoption of ordinances and other actions that may not be feasible for local municipalities to accomplish within the associated timeframes. Please simplify the permit enforcement schedule to allow for the various processes a local government will need to go through. This could be as simple as requiring the basic measures be implemented within the five year permit cycle.

**Monitoring:** BMP Effectiveness monitoring should not be part of the permit, and should be conducted on the state or federal level. Once Ecology endorses a BMP, the utilities should implement based on Ecology's recommendations. BMP monitoring can be within the watershed, but as new sources of pollutants in a watershed may be beyond a local municipality's control, numerical limits on discharge quantities are neither effective nor feasible.

There are a number of things within a watershed that are out of a jurisdiction's control, including illegal dumping, accidental discharge, etc.

Instead of meeting numerical limits on discharges, structure the monitoring program to identify basins for priority improvements.

Ecology's desire to use monitoring to "assess the effect of implementing the permit" at the local level is not achievable under the current proposal.

Monitoring receiving waters alone may not be a true measure of success as individual water quality enhancements, such as education, will not be apparent in the data. Also, collecting statistically useful stormwater data is extremely difficult; if the intention is to know the major constituents of stormwater, this work has been done with Phase I communities, relating to a wide range of parameters. Local communities in this area have also already established a baseline knowledge of stormwater quality.

Instead of requiring chemical monitoring, we suggest setting performance targets and tracking success toward meeting those goals. Some examples could include:

- Number of inspections completed (target 50% of all private facilities)
- Number of private facilities that did not pass inspection (target: none)
- Percent of outfalls inspected annually for illicit discharge (target: 50%)
- Percent of target audience reached for each education effort (target: 100%)
- Percent of catch basins/pipes inspected/cleaned (target: 30%)

**Inspections:** The liability of local jurisdictions to inspect and or test private stormwater facilities should be limited to those private developments with a connection to the city system. While the city is willing to undertake inspections city-wide including on private property, the city can not take responsibility for impacts caused by lack of maintenance or other issues on private property over which they have no control.

**Stormwater Manual:** The Stormwater Management Manual of Western Washington (2005) is not a regulatory tool. It is guidance to be considered by local jurisdictions as a way to enhance their stormwater programs. All references to the manual should allow for adoption of technical equivalent manuals developed by local jurisdictions.

**Pre-developed Forested Conditions:** This permit requires that mitigated stormwater flows meet a pre-developed forested condition. Urban conditions and previously heavily developed sites make this requirement largely unattainable and would put the jurisdiction in jeopardy of violating the permit. Also, it is not clear that forested conditions should be the baseline. For example, in the Thurston County region, there are a number of native prairies and areas of exposed bedrock that would alter pre-developed release rate. The City of Tumwater identifies these areas in the Drainage Manual and this should take precedence for development standards.

**Definitions of New Outfalls, New Discharges and New Sources:** Please clarify the extent the city would be burdened by upstream development on existing

outfalls. Currently, the language is unclear and unreasonable burdens should not be placed on the local municipality, and performance standards should not change each time a new development comes online upstream..

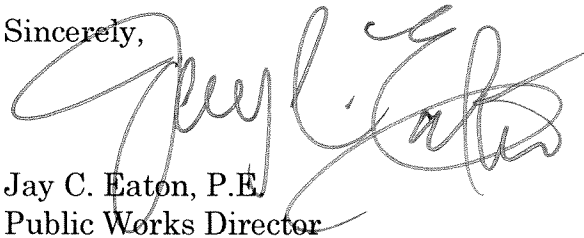
**Co-Permittees and Secondary Permittees:** It appears that there is too large a burden placed on the permittee to oversee and “manage” compliance of co-permittees and secondary permittees. A permittee jurisdiction should be responsible solely for the discharge from their system. In particular, any assertion by a co-permittee or secondary permittee that the primary permittee is responsible for or taking care of a requirement under a permit should not be accepted without evidence of a written agreement with the permittee to that effect, or notice to the permittee and an opportunity to comment or dispute that assertion.

Overall, we interpret the basic objective of the permit is for Ecology to allow discharges of stormwater from regulated jurisdictions, so long as pollutant loads from existing outfalls are reduced to the maximum extent practicable and new discharges are controlled in accordance to Ecology’s Stormwater Manual OR a technical equivalent, similar to the manual currently in use in Olympia, Lacey, Tumwater and Thurston County.

Many of the above mentioned compliance measures of the permit seem excessive and unenforceable at current Ecology staffing levels. Ecology needs to prioritize elements that are critical to meeting water quality goals and this permit should only include elements that can reasonably be accomplished by the Permittee and Ecology.

Thank you for the opportunity to provide comments on the draft permit. If you have any questions, please call Dan Smith at 360-754-4140 or via email at [desmith@ci.tumwater.wa.us](mailto:desmith@ci.tumwater.wa.us). We look forward to working with you on the implementation of this permit in a feasible and effective manner to achieve higher levels of environmental protection.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay C. Eaton", is written over the typed name and title.

Jay C. Eaton, P.E.  
Public Works Director

JE/DS/ca

Enclosure: Draft NPDES Phase II Permit Comments

## Detailed Comments on Ecology's Draft NPDES Phase II Permit

Under

Page 5 – S2(D)1:

Add – “This permit authorizes groundwater pump test discharging or discharge of water from production test wells, monitoring or resource protection wells prior to and during testing, unless the discharge...”

Page 12 – S7(a)(i):

Change language to read: “Provide educational opportunities for all targeted audiences to the extent feasible...”

Page 13 – S7(1)(b):

Again “100% of audiences” is an ideal target but realistically may be unachievable. Change language to read “target key audiences as feasible”.

Page 15 – S7(3)(b)(i):

Under rising groundwater (this may be a natural phenomenon outside of the permittee's control), please add “to the extent feasible, limit contributions of rising groundwater.”

Page 15 – S7(3)(b)(i):

To clarify section pertaining to dechlorinated swimming pools, delete first sentence and say “if necessary to discharge swimming pool waters, discharges shall be...”

Page 20 – S7(5)(a)

This appears to be too restrictive, just allowing the 2005 Ecology Manual. Please add a statement to reflect that Ecology will accept any technologically equivalent updates or revisions undertaken by local jurisdictions consistent with the 2005 Stormwater Management Manual for Western Washington.

Please clarify whether the “example” provided under the statement in this section is intended as an enforceable element of this permit, or merely an example for the Permittee to model their program after.

Page 23 – S8:

Please add language to clarify the legal responsibility of the secondary permittee to the regulated MS4. If exceedances arise from a secondary permittee and discharge enters the regulated MS4 system, is the regulated MS4 ultimately responsible? If yes, is there a regulatory mechanism in place for the MS4 to seek “shelter” from liability damages until the secondary permittee addresses their issue? If not, Ecology's permit should require that secondary permittees provide evidence of the permittee's notification and assent in a written form such as an agreement between the entities.

Page 23 – S8(B)(1)

Controls should also address quantity of stormwater discharges from secondary permittees to reduce or eliminate negative impacts on the receiving system and downstream resources.

Page 27 – S8(H)(4)

Is the regulated MS4 exempt from inspections of the secondary permittee system? Yes or no, this needs to be clarified here.

Page 28 – S9 Reporting

Annual reports seem excessive. Smaller jurisdictions may have a difficult time gathering all the necessary elements. What will Ecology do with all the information? Does Ecology have the staffing to effectively manage the program as it is currently configured? If annual reports are required, we request that the report take a simple format so as to not burden the jurisdiction with an overwhelming data collection effort.

Page 28 – S9(B)(1)

If there are secondary permittees within the regulated area, please allow for joint reporting, if desired by the parties.

Page 28 – S9(B)(6)

This is very vague – Does Ecology intend for MS4s to report data on performance, or to report that BMPs used in the basins were selected appropriately. If there is no substance to this – delete.

Page 28 – S9(B)(7)

Secondary permittees must state the grounds (agreement or otherwise) and provide document proof thereof, for relying upon another governmental entity. A secondary permittee should not be allowed to rely upon a permittee jurisdiction to solve issues normally not required to be undertaken by the permittee.

At a minimum, there should be notice to the regulated MS4 and an opportunity to comment or object, as part of the initial permit application approval process. As permit conditions change for the secondary permittee, the regulated MS4 should receive notice.

Page 33 – G(15)

Heading seems to be a disincentive. Should read “Reporting Required”, or incorporate this section into “Modification” section above.